IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

W.P. No. 357 of 2002 (S/S)

Sri Jai Bhagwan Sharma (deceased) …….. Petitioner

Versus

Municipal Board, Haridwar & others …….. Respondents

WITH

W.P. No. 130 of 2002 (S/B)

Ram Kumar Sharma ……. Petitioner

Versus

Magistrate / Administrator,
Nagar Palika Parishad, Haridwar & others …… Respondents

Mr. C.K. Sharma, learned counsel for the petitioner.
Mr. Pankaj Miglani, learned counsel for respondents No. 1 to 3.

Hon'ble P.C. Verma, A.C.J.

Both these writ petitions are connected with each other and therefore, they are being taken together for disposal. For the sake of convenience, I am mentioning the facts in writ petition No. 357 of 2002 (S/S).

This writ petition has been filed by the petitioner seeking a writ of certiorari to quash the orders dated 19.2.1987, 26.4.1988 and 3.8.1988 contained in Annexures 6, 8 & 10 to the writ petition.

Heard Mr. C.K. Sharma, learned counsel for the petitioner and Mr. Pankaj Miglani, learned counsel for respondents No. 1 to 3.

Petitioner was working as cashier in the Nagar Palika, Haridwar, Saharanpur. The petitioner was suspended earlier on 5.10.1984 and a charge-sheet dated 19.8.1985 was issued against him by respondent No. 1. Departmental proceedings were held against the petitioner. The charges were found proved against the petitioner and thereafter, the impugned order of termination dated 19.2.1987 has been passed. Against this order of termination, the petitioner preferred an appeal, which was dismissed on 26.4.1988.

Learned counsel for the petitioner submitted that the petitioner had demanded some documents, which were not supplied to him,

therefore, the enquiry stands vitiated as the petitioner could not put is full defence for want of documents. Learned counsel for the petitioner further submitted that on the application of the petitioner dated 2.9.1985 for demand of relevant documents, the petitioner was informed that the documents demanded by the petitioner were in the criminal court, where the trial of offence against the petitioner under Section 409 I.P.C. was going on and the petitioner may obtain the copies of the documents from there. Therefore, it was submitted by the learned counsel for the petitioner that for want of documents, the enquiry report cannot be said to be based on material facts as the respondents were not having the documents as the documents were in the trial court. Thus, the enquiry report is based on no material.

A perusal of the enquiry report, which is on record in writ petition No. 130 of 2002 (S/B), shows that the enquiry officer has given the report based on relevant material relating to the charges and on the basis of the material and evidence on record, charges have been found proved against the petitioner. It is also evident that full opportunity of defence has been given to the petitioner.

Learned counsel for the petitioner submitted that the petitioner has been acquitted in criminal case under Section 409 I.P.C. on the same charges.

From the perusal of the judgment of the trial court, it is evident that the petitioner has not been honourably exonerated, but he has been given the benefit of doubt. Therefore, the misconduct of the petitioner was doubtful and has been found proved in the departmental enquiry by the enquiry officer.

It was a case for major punishment of dismissal, but taking a lenient view, the Punishing authority has passed the order of termination.

It is settled law that the order of termination cannot be interfered with until and unless it is disproportionate and shocking in nature.

In view of the aforesaid, I do not finid any merit in the above writ petitions. The writ petitions are devoid of merit and are, hereby, dismissed. No order as to costs.

(P.C. Verma, A.C.J.)

Dt. 22.06.2004
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